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VIA ECF, ELECTRONIC MAIL: bernstein.chambers@nysb.uscourts.gov
and FEDERAL EXPRESS

Honorable Stuart M. Bernstein
United States Bankruptcy Court
Southern District of New York
One Bowling Green
New York, NY 10004-1408

Re: *In re Madoff* (08-01789) – Profit Withdrawal Litigation

Dear Judge Bernstein:

We write with respect to Seanna Brown's letter dated August 3, 2016 regarding the question of whether the "Ponzi start date issue" is part of the profit withdrawal proceedings. We believe it is for the following reason:

The purpose of the profit withdrawal litigation was to determine the claims of people like Aaron Blecker whose claims the Trustee disallowed because: (a) the Trustee claimed that Madoff was operating a Ponzi scheme throughout the entire period from 1980 on; and (b) the Trustee claimed that the customers had negative net equity because the "PW" entries on their statements represented withdrawals from their accounts. Unless the Trustee can prove both of these points, he is required to allow the claims of people like Mr. Blecker.

When we questioned Mr. Madoff, we established two facts: First, that Mr. Madoff's policy was that he would not send money to any customer who did not send a request for a withdrawal in writing. While the Trustee has challenged Mr. Madoff's credibility, Mr. Madoff's testimony on this point is consistent with the testimony elicited from the various Madoff employees that have recently been deposed. It is also consistent with Madoff's records, as produced by the Trustee.

Second, Mr. Madoff testified that the fraud did not start until after January 1, 1992. This testimony could not have been a surprise to the Trustee since it is consistent with the plea of Madoff's right-hand man, Frank DiPascali, who swore that the fraud began in the late 1980s or early 1990s. The Court will recall that the government accepted Mr. DiPascali's veracity and used him as its principal witness in the trial against several other Madoff employees. Surely, if the government had any reason to believe that Mr. DiPascali had lied in his plea, the government would not have allowed him to remain out of prison for several years.

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Following Mr. Madoff's deposition, the Trustee served on counsel in the profit withdrawal litigation the expert report of Mr. Dubinsky in recognition of the fact that Madoff's solvency prior to 1998 is an issue in the profit withdrawal litigation.

Surely, having waited seven years for his claim to be paid, Mr. Blecker is entitled to have all issues determined at the same time

We welcome the opportunity to discuss this with the Court.

Yours respectfully,

/s/ Helen Davis Chaitman

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HDC/sh

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